IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6861 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANGILAL KALUBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6861 of 2001

MS SUMAN PAHWA for MR DM THAKKAR for Petitioner No. 1

MR KT DAVE AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 12/10/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under Section 3 (2) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('the Act'

for short), the District Magistrate, Bhavnagar, vide order dated March 31, 2001, Annexure A to the petition, detained the petitioner - detenu.

2. The averments made in the petition and the grounds of detention manifest that on February 20, 2001, an inspection was made by the authority of the premises hired on rent by the brother of the petitioner. During the inspection, the stock of blue kerosene and other equipments were found which were used for converting blue kerosene into white kerosene. It is alleged that the petitioner was helping his brother in illegally purchasing blue kerosene and selling the same in the open market after converting the same into white kerosene. Thus, without licence, the blue kerosene was being purchased and sold as white kerosene by the brother of the petitioner with the help of the petitioner. The said activity has prejudicially affected the maintenance of civil supply and with a view to preventing him from acting in any manner prejudicial to the maintenance of supply of essential commodities to the community and public at large, the detaining authority has in exercise of powers conferred under Section 3 (2) of the Act detained the petitioner.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing and setting aside the impugned order of detention and to set him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. Pahwa, learned advocate for the petitioner has restricted her arguments to the ground that the order of detention was approved by the State Government on April 11, 2001. A representation was made on behalf of the detenu by the advocate on August 18, 2001 which came to be received by the detaining authority on August 20, 2001 and rejected vide order dated August 23, 2001 and thereafter a copy of the representation was forwarded to the State Government on the same day. She therefore contended that the detaining authority should not have rejected the representation. As the order of detention was approved by the Government on April 11, 2001, the detaining authority has become functus officio and, therefore, he was required to forward the representation to the State Government for its consideration and he should not have decided the same, therefore, she urged to allow the petition by quashing and setting aside the order of detention and set

that petitioner at liberty forthwith.

5. Mr. K.T. Dave, learned A.G.P. who appears on behalf of respondent Nos.1 to 3 has opposed the petition by filing two separate affidavits, one sworn by P.G. Vyas, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies & Consumer Affairs Department, Sachivalaya, Gandhinagar and another sworn by K.A. Patel, District Magistrate, Bhavnagar. Similarly, Ms. P.J. Davawala, learned counsel who appears on behalf of respondent No.4, Union of India has also opposed the petition by filing affidavit sworn by S.L. Meena, Under Secretary in the department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. However, they do not dispute the aspect of rejection of the representation dated August 18, 2001 vide order dated August 23, 2001 by the detaining authority inspite of the fact that the order of detention was approved much prior to that, that is, on April 11, 2001. They therefore urged to pass appropriate orders in light of the principles enunciated by the Supreme Court and this Court in this regard.

6. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the documents annexed thereto including the impugned order of detention and the representation dated August 18, 2001 made on behalf of the petitioner to the detaining authority.

7. So far as the factual aspect of the matter is concerned, there is no dispute that the order of detention came to be passed on March 31, 2001 and thereafter a representation was made on August 18, 2001 which was received by the detaining authority on August 20, 2001 and it came to be rejected by him on August 23, 2001 and thereafter it was forwarded to the State Government for further consideration. The State Government has received the said representation on August 28, 2001 and rejected the same vide order dated August 30, 2001 and the same was communicated to the detenu on August 31, 2001. It is an admitted position that the order of detention was approved by the State Government on April 11, 2001. It is settled principles of law that once the State Government approves the order of detention the detaining authority becomes functus officio. He has no role except to forward the representation received by him promptly without making any delay to the State Government for its consideration. Notwithstanding the aforesaid fact, the detaining outright has rejected the representation made by the petitioner on August 23, 2001

inspite of the fact that he has become functus officio. Therefore, the said act on the part of the detaining authority is beyond his power and on this ground alone the petition deserves to be allowed.

8. Similar question had arisen before the Supreme Court in Navalshankar Ishwarlal Dave v. State of Gujarat, AIR 1994 SC 1496. In the said case the Supreme Court has observed that after approval of the detention order by the State Government, the detaining authority has no express power or general power under Section 21 of the General Clauses Act to revoke or rescind or modify order.

9. A Division Bench of this court in the case of Urmilaben Navnitlal Gandhi v. The Commissioner of Police, Surat City, 1994 (2) GLH (UJ) 10 and in Salim Pothiyu Rehmanbhai Belia v. District Magistrate, District Mehsana, 1994 (2) GLH (UJ) 11 has by relying upon the judgment of the Supreme Court in Navalshankar Ishwarlal Dave's case (supra) observed that the detaining authority has no power to revoke order of detention after it is confirmed by the State Government even though the representation is addressed to it.

10. Applying the above principles laid down by the Supreme Court as well as Division Bench of this Court, at the cost of repetition, be it stated that the detaining authority has become functus officio after the detention order is approved by the State Government and therefore the detaining authority could not have decided the representation but should have forwarded the representation received by him to the State Government promptly for its consideration and, therefore, the order of detention is vitiated on this ground and the petition deserves to be allowed.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)